PENSIONS

By: Lisa J. Mills & Natasha D. Monkman

A Uniquely Canadian Approach To Solvency Funding Relief

Defined Benefit pension plans throughout Canada have been affected by the stock market woes of 2008 and prevailing low interest rates. In many cases, these factors led to record solvency deficiencies and the requirement to make correspondingly higher special payments to fund those deficiencies.

Solvency funding relief was borne out of a concern that the increased pension funding costs might lead companies with limited resources to forego making desired investments in their operations in the midst of an economic downturn.

Although one might expect the response of Canada's provincial and federal governments to be consistent given the similar nature of the issues, in fact, each jurisdiction has adopted a markedly different approach. The relief available diverges in terms of stakeholder involvement in funding relief applications, the temporal reach, and the specific types of relief available.

Federal Government

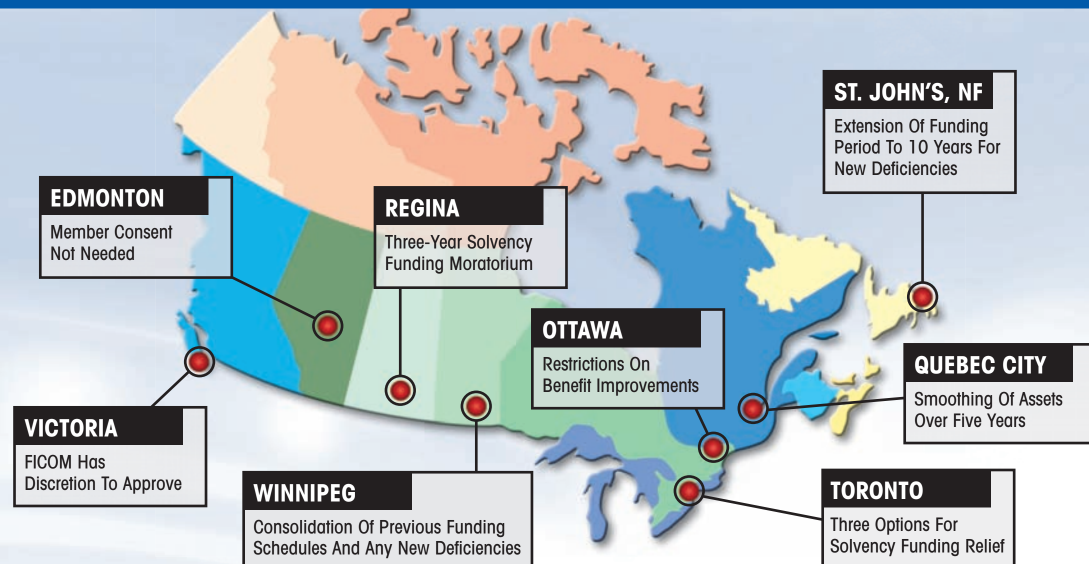
The federal government enacted the Solvency Funding Relief Regulations, 2009, in June 2009. Temporary solvency funding relief is made available to federally regulated pension plans by extending the amortization period from five to 10 years for solvency deficiencies emerging in the 2008 plan year. In the 2009 plan year, the employer may elect to make contributions assuming the solvency deficiency will be amortized over 10 years. In order to continue making contributions using the 10-year amortization schedule, the plan administrator must obtain, by the end of the 2009 plan year, either:

- a letter of credit for the difference between the payments required by adopting a five-year instead of a 10-year amortization schedule
- the consent of members and retirees (described below)

If neither is obtained, the remaining deficiency must be funded over the following five years (starting after the end of the first year) in accordance with the usual funding regime.

In order to continue funding over 10 years under the consent option, consent to the amortization extension will be deemed obtained if no more than one-third of members and one-third of former members (including retirees, deferred vested members, and other beneficiaries in receipt of pensions) object by the end of the 2009 plan year.

These regulations also permit, for the purposes of the 10-year amortization payment schedule, assets to be valued using a smoothing methodology which produces an asset value in excess of the current 110 per cent limit. Any special payment reductions resulting from the higher smoothed asset value are subject to a statutory deemed trust.



British Columbia

The Financial Institutions Commission of BC (FICOM) has issued a policy indicating that it will review, and has the discretion to approve, applications to amortize solvency deficiencies over as long as 15 years where extenuating reasons exist. FICOM will consider a number of factors, including:

- how the extension to the solvency amortization schedule will benefit members
- how the solvency deficiency arose
- whether the special payments otherwise due would result in financial hardship for the plan sponsor and what other alternatives to manage this hardship have been considered or implemented

The consent of neither members nor retirees is

required. However, if FICOM approves the request for relief, plan beneficiaries must be informed.

Significantly, FICOM has undertaken a more active role in determining the appropriateness of the funding relief than the jurisdictions which rely on stakeholder consent or in which the regulator does not have the discretion to refuse an application if stated criteria are satisfied. Consideration of the plan sponsor's financial viability makes the FICOM approach closer to the solvency relief requirements applicable to pension plans operated in the United Kingdom.

Alberta

Plan sponsors in Alberta may apply to the Alberta Superintendent of Pensions for a three-year solvency funding moratorium without seeking the consent of plan members, former members, or retirees. Members are required, however, to be provided with notice of the employer's intention to apply for relief under the new regulations. The moratorium applies with respect to new and existing solvency deficiencies.

In order to take advantage of the moratorium option, plan administrators must apply to the superintendent prior to December 31, 2009. When a moratorium is elected in respect of special payments arising from the solvency valuation, all going concern special payments must be funded over the lesser of the balance remaining in existing schedules or 10 years.

Alberta also offers plans an alternative of seeking an extension of the amortization period from five to 10 years for new solvency deficiencies revealed in an actuarial report with a valuation date between September 1, 2008, and December 31, 2009. This option is also available without requiring the consent of members or retirees.

Access to solvency relief is not automatic. The superintendent has the discretion to approve or decline to approve a request for relief and, once granted, retains the authority to impose new conditions, require additional funding, or withdraw its consent on a plan-by-plan basis.

Saskatchewan

Saskatchewan has also announced it will provide plan sponsors with solvency funding relief via a solvency funding moratorium. The moratorium applies only to new solvency deficiencies revealed in a new valuation report. Like Alberta, access to relief is available without requiring the consent of beneficiaries, but administrators must provide notice of the intention to elect solvency relief.

Saskatchewan does not require full funding on the termination of a pension plan in the normal course. However, the regulations introduce a terminal funding requirement for any plan that elects solvency funding relief. No other jurisdictions require enhanced termination funding or otherwise expressly address the possible consequences of permitting plan sponsors to contribute less into already underfunded pension plans.

Manitoba

Manitoba introduced the Special Payments Relief Regulations in December 2008. This regulation permits the consolidation of previous funding schedules and any new deficiencies and extends the amortization schedules for solvency funding from five to 10 years with the consent of members and retirees. The regulations permit the extension if less than one-third of members and former members and less than one-third of retirees and beneficiaries object.

Ontario

Ontario offers three possible options for solvency funding relief. When filing an actuarial report with a valuation date between September 30, 2008, and September 29, 2011, a plan administrator may:

- defer, up to one year, the start of special payments in respect of any new going concern unfunded liability or new solvency deficiency
- consolidate special payments for existing solvency deficiencies into a new five-year payment schedule starting on the valuation date of the actuarial report
- extend the period for liquidating the new solvency deficiency from five years to a maximum of 10 years

Plan administrators are not required to obtain the consent of members or former members in order to elect to defer the start of payments for one year or to consolidate and fund existing deficiencies over a new five-year schedule. However, the plan administrator must provide enhanced notice to the eligible members and eligible former members if it elects to take advantage of these options. In order to amortize a solvency deficiency over 10 years, a plan administrator must obtain the consent of eligible members and eligible former members.

Quebec

Quebec's regulations have yet to be enacted. However, it has released draft regulations which propose three solvency relief measures:

- smoothing of assets over five years
- consolidation of existing solvency deficiencies
- extension of amortization periods from five to 10 years

The Quebec draft regulations require employer contributions to be based on the higher of the payments required taking into account the relief measures and a minimum contribution. The minimum contribution requirement limits funding relief to the effects of the 2008 economic crisis and does not permit employers to contribute less than they would have been required to contribute, but for the economic crisis.

Newfoundland

Newfoundland enacted solvency relief regulations in early 2008. The Solvency Funding Relief Regulation provides three relief options:

- consolidation of previous solvency funding payment schedules and amortizing the entire solvency deficiency over a new five-year period
- extension of the solvency funding period to 10 years for new deficiencies with the consent of members
- extension of the solvency funding payment period to 10 years by securing the difference between five-year and 10-year level of payments with a letter of credit

The consent requirement is deemed to be obtained if less than one-third of the members and less than one-third of the former members object. When existing deficiencies are consolidated or funding is secured with a letter of credit, only notice must be given to members.

Obtaining Consent

Where the consent of members (or their collective bargaining agent if applicable) and retirees is required, obtaining consent will take considerable planning and may require disclosure of business circumstances to justify that the short-term relief sought is warranted. At the same time, the question of the corporation's future financial viability and its ability to fund the pension plan in the longer-term will likely need to be addressed to obtain consent to the interim relief.

Solvency relief measures are not homogeneous across Canada and, in most jurisdictions, plan sponsors have a range of relief options available. What is common to all pension plan sponsors and administrators is that the months ahead will require due attention to the financial, human resources, governance, legal, and actuarial concerns associated with funding decisions and applications for solvency funding relief. ■

Lisa J. Mills (lisa-mills@hicksmorley.com) is a partner and Natasha D. Monkman (natasha-monkman@hicksmorley.com) is an associate in Hicks Morley's pension and benefits practice group.